

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CITY OF FORT DODGE - JOHN W.
PRAY WATER FACILITY
NPDES Permit #9433000**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2015-WW-12

TO: City of Fort Dodge
Matt Bemrich, Mayor
Municipal Building
819 1st Avenue South
Fort Dodge, IA 50501

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Fort Dodge (Fort Dodge) and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a construction schedule to construct necessary treatment facilities to adequately treat or eliminate the discharge of wastewater from the John W. Pray water treatment facility. Pursuant to this Order, Fort Dodge shall comply with the construction schedule contained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Schelling
NPDES Permits Section
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-725-8407

Relating to legal requirements:

John Crotty
Legal Services Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph. 515-725-8249

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto.

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III. STATEMENT OF FACTS

1. Fort Dodge owns and operates the John W. Pray water treatment facility. The water treatment facility processes well water to remove iron, filter the water, disinfect, and otherwise provide treatment to render the water potable. The treatment process results in a discharge of wastewater to an underground pipe which discharges to a water of the state. It is believed that this discharge has been occurring since at least 1970.

2. An NPDES permit is required for the discharge of wastewater by the John W. Pray water treatment facility. Fort Dodge has not previously obtained a permit for this discharge.

3. DNR proposes to issue NPDES Permit #9433000 for this facility. The permit will specify effluent limitations for total suspended solids (TSS), pH, total residual chlorine (TRC), total iron, and nitrate nitrogen. The proposed TSS limitations are technology-based limitations developed on the basis of best professional judgment. All other limitations are derived from the Iowa water quality standards.

4. Limited data is available to characterize the existing discharge, but it is expected that Fort Dodge will need to either install treatment or eliminate the discharge in order to comply with the effluent limitations for TSS, TRC, and total iron. It is expected that Fort Dodge will be able to immediately comply with the effluent limitations for pH and nitrate nitrogen.

5. DNR and Fort Dodge agree that a schedule is both necessary and appropriate to allow the facility time to: (1) adequately characterize the discharge to obtain data for use in design of treatment facilities; and, (2) provide time to change operations or construct facilities that will allow compliance with the effluent limitations for TSS, TRC, and total iron.

IV. CONCLUSIONS OF LAW

The DNR and Fort Dodge agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission (Commission).

2. Iowa Code section 455B.173(3) authorizes and requires the Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the

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operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules.

3. Both federal and state rules and regulations allow a facility time to comply when a new or more stringent effluent limitation is specified in a permit {See 40 CFR §122.47 and IAC 567-64.7(4)}. Any schedule of compliance must require compliance as soon as possible but not later than the statutory deadlines specified in the Clean Water Act (CWA).

4. CWA §301 requires that compliance with effluent limitations established on the basis of CWA §301(b)(1)(A)(i) [BPT], §301(b)(2)(A)(i) [BAT] or §301(b)(2)(E) [BCT] be achieved no later than July 1, 1977, March 31, 1989, and March 31, 1989 respectively. The proposed effluent limitations for TSS are technology-based limitations that represent BPT/BCT and compliance was required by March 31, 1989.

5. Compliance schedules not in accordance with the statutory provisions of the CWA cannot be authorized by an NPDES permit.

V. ORDER

DNR and Fort Dodge hereby agree, and Fort Dodge is hereby ordered to make operational changes and/or construct facilities to comply with the permit effluent limitations, as established in NPDES permit # 9433000, according to the following schedule:

1. By 12 months after issuance of the NPDES permit, Fort Dodge shall submit a preliminary engineering report and plans and specifications for the necessary operational changes and/or construction of facilities to the DNR Water Supply Engineering Section.

2. By 24 months after the issuance of its NPDES permit, Fort Dodge shall submit a progress report to the DNR detailing the progress made toward meeting permit effluent limitations for TSS, TRC, and total iron. A second progress report shall be submitted to the DNR by 36 months after the issuance of the NPDES permit.

3. By 47 months after the issuance of the NPDES permit, Fort Dodge shall complete operational changes and/or construction of facilities to comply with the permit effluent limitations for TSS, TRC, and total iron. Fort Dodge shall provide written notice of compliance to the DNR.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. The DNR has determined that a penalty is not appropriate at this time. Fort Dodge has realized only minimal economic benefit and the proposed construction schedule has been determined to constitute the shortest reasonable time to achieve compliance. Since being informed of the need for a permit, Fort Dodge has acted expeditiously and fully cooperated with the DNR. The DNR finds no gravity or culpability basis for a penalty at this time.

3. The DNR is authorized to issue an administrative order with penalties for noncompliance with this Order or to seek referral to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief.


VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Fort Dodge. By signing this Order, all rights to appeal this Order are waived.

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VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of
April, 2015



CITY OF FORT DODGE

Dated this 13 day of
April, 2015

NPDES #9433000; Field Office #2; John Crotty; EPA